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February 16, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in:
Standardized and Enhanced Disclosure
Requirements for Television Broadcast
Licensee Public Interest Obligations, MM
Dkt. 00-168 and Standardizing Program
Reporting Requirements for Broadcast
Licensees, MB Dkt. 11-189

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission's rules, the Institute for Public Representation, on behalf of the Public Interest Public Airwaves Coalition, submits this notice regarding an *ex parte* communication in the above referenced dockets.

On February 14, 2012, Angela Campbell, Laura Moy and Yasemin Kasim Luebke of the Georgetown Institute for Public Representation; Corie Wright of Free Press; Meredith McGehee of Campaign Legal Center; Andrew Schwartzman and Chrystiane Pereira of Media Access Project; met with Robert Baker, Evan Baranoff, Hope Cooper, Bill Lake, Kim Matthews, Mary Beth Murphy, Robert Ratcliffe, and Holly Saurer of the Media Bureau; and Greg Elin, Chief Data Officer of the Federal Communications Commission.

*Admitted to the Maryland bar only; DC bar membership pending. Practice supervised by members of the DC bar.

The subject of the meeting was the Federal Communications Commission's recent proposals to replace broadcasters' paper public files with an online public file that would be hosted by the Commission and to replace the quarterly issues/programs (I/P) lists with a streamlined, standardized disclosure form that would also be hosted by the Commission.

The Commission Should Immediately Adopt a Digital Workflow

We urged the Commission to require a digital workflow for the public file that includes electronic filing of file components in searchable formats. We reiterated that the Commission should take all reasonable measures to expedite the creation of an advanced database and encouraged using existing files in the interim. We emphasized the importance of moving the public file online by the 2012 general election

We restated our belief that PIPAC's proposal reflects a reasonable trade-off between the goal of maximizing data searchability and analysis and the need to expedite access to broadcasters' online public files.

Broadcasters' Burden Claims Are Inflated

We also explained that broadcaster estimates of the time and cost burden of maintaining their political files online are grossly exaggerated. Going forward, maintaining an online political file would require no more administrative burden or staff time than maintaining the existing paper file. Indeed, many broadcasters already maintain these records in electronic form, thus an online public file requirement would eliminate the burden of printing out these documents so that they can be organized in the existing paper file. It would also eliminate the need to have on-site staff supervise visitors inspecting the paper file.

Moreover, to the extent that broadcasters might incur a one-time cost of uploading their existing paper files, PIPAC estimates that the total cost of scanning a file (generously estimated at 5000 pages) would be around \$500 to \$600. One Florida-based document scanning service charges \$0.09/page to create a PDF searchable text. Therefore, a scan of 5000 pages at \$0.09/page (plus a 5% volume discount offered by the company) totals \$427.50.¹ Another document scanning service charges \$0.05/page to create a PDF with searchable text. Thus, 5000 pages at \$0.05/page plus \$250 for shipping totals \$500.² Alternatively, broadcasters could purchase their own scanner. For

¹ <http://www.cspdocscan.com/Pricing.html>.

² http://www.scantastik.com/services/pdf_conversions.htm.

example, a scanner that scans 20 pages per minute, has a 50 page document feeder, and scans at 22ppm can be purchased for around \$495.³ A scanner operating at this speed could scan 5000 pages in approximately 4 hours and 10 minutes. Even if an employee were hired specifically to coordinate this scanning operation and paid the generous rate of \$25/hour, this would add only an additional \$104.25. Therefore a broadcaster that purchased a scanner of its own and paid an employee to operate it would be spending a total of \$599.25. The cost of \$500 to \$600 to scan broadcasters' existing paper file is considerably less than what broadcasters claim, and is a one-time expense that stations with even the smallest of budgets should be able to manage.

We emphasized that broadcasters' proposal to allow stations to opt out of having the Commission host the public file so they could host it on their own site was incongruous with the position broadcasters' have taken in the past. Previously, broadcasters argued that hosting their files on their own station websites would be too burdensome for licensees. Broadcasters do not explain why they have suddenly reversed course on their previous claims. Nor do they provide a legitimate reason why these files should be maintained piecemeal at different locations rather than in a centralized database. To the contrary, the Coalition commended the Commission for taking on the increased burden and responsibility for hosting such files itself, thereby maximizing access to information while easing the overall burden on the public and all other stakeholders.

Broadcasters' Claim that Advertising Information Is Proprietary and Sensitive Is Wrong

We addressed recent claims by broadcast industry executives that some of the information contained in broadcasters' political files constitutes proprietary and sensitive advertising pricing information.⁴ These claims are inconsistent with both law and fact. All of the information contained in the political file already must be made available to the public and has been so for decades. Under existing law, anyone may inspect the records contained in the political file without disclosing their organization or affiliation. Visitors to the public file are also permitted to copy documents contained in the political file. For example, the New America Foundation, a member of the

³ Fujitsu ScanSnap S1500 Instant PDF Sheet-Fed Scanner for PC,
<http://www.amazon.com/Fujitsu-ScanSnap-Instant-Sheet-Fed-Scanner/dp/B001V9LQH0/>.

⁴ See e.g., *Ex Parte filing of the Walt Disney Company*, filed MM Dkt 00-168 (Feb. 13, 2012)
<http://apps.fcc.gov/ecfs/document/view?id=7021859933>.

Coalition, has visited a number of stations to copy portions of their political files for the purpose of posting those records online.⁵

The Communications Act mandates that broadcasters keep records of political advertising time sold, including “the rate charged for the broadcast time” and “the class of time that is purchased.”⁶ Given that Congress mandated that this information be disclosed to the public, it is erroneous for broadcasters to suggest that such information is confidential. Nor does the FCC have the authority to treat it as confidential. At any rate, merely placing this very same information online would not adversely affect the competitive incentives that currently exist in the marketplace. Under existing law, anyone may inspect the political advertising rates contained in the political file without disclosing their organization or affiliation.

Broadcasters Are Responsible for Sponsorship Identification Regardless of Where the Programming Originated

We explained that broadcasters are ultimately responsible for on-air sponsorship identification information and are required to ensure compliance with the rules, even if the content is not originated by the station itself. The Commission’s sponsorship identification rules already require stations to clearly identify the sponsors of all broadcast programming whether it is syndicated, network, or locally originated.⁷ Congress enacted section 507 of the Communications Act which provides that if money, services or other consideration are provided in exchange for inclusion of certain content for broadcast—regardless of where in the production chain the exchange takes place—then that fact must be disclosed to the station in advance of the broadcast. This disclosure is required so the station may broadcast the sponsorship identification announcement required by Section 317 of the Communications Act.⁸ Consistent with this obligation, stations must currently track and verify specific sponsorship identification conformity from syndicators and networks ahead of broadcast—or risk violation of the rules. Because stations already receive these records in advance, it would not be unduly burdensome for broadcasters to upload those records as part of the online public file.

⁵ See Tom Glaisyer, *Bringing Broadcaster Public Files into the 21st Century*, New America Foundation (Feb. 13, 2012), http://mediapolicy.newamerica.net/blogposts/2012/bringing_broadcaster_public_files_into_the_21st_century-63637.

⁶ 47 U.S.C. § 315(e).

⁷ 47 C.F.R. §73.1212 (a).

⁸ See 47 U.S.C. §508; see also Federal Communications Commission Enforcement Bureau, Payola and Sponsorship Identification, <http://transition.fcc.gov/eb/broadcast/sponsid.html>.

Two Composite Weeks Comprising Random Dates Ensure Accurate Reporting while Minimizing Burdens on Broadcasters

We reiterated that the use of two composite weeks is a compromise between the public's need for reliable, comprehensive data to ensure broadcasters are fulfilling their duties to the public and the broadcasters' interest in minimizing their reporting expenses. Properly constructed composite weeks would ensure accurate reporting while significantly reducing burdens on broadcasters. We stressed that the Commission should adopt without further modification our proposal that reporting be based on two composite weeks per quarter, that the Commission randomly select the reporting dates, and that the Commission not inform broadcasters of the reporting dates in advance.

We urged the Commission not to adopt an alternate proposal to use one contiguous week. There is ample data demonstrating that composite weeks provide better data than contiguous weeks and are scientifically valid. Among the various methods of probability sampling, randomly selected composite weeks provide the best representation of traditional media.⁹ Having all broadcasters report on the same dates is also important to minimize any remaining distortive effects from these variations in standard programming and allow for more effective comparisons.

The Standardized Form Is Reasonable and Permissible

We stressed that the proposed standardized form does not impose or suggest any quantitative program requirements. The proposed form merely requires a minimal amount of segment-by-segment reporting of programming that falls into three categories long understood to constitute the core of licensees' public interest obligations. We urged that these categories should be limited to programming that is locally-originated. Otherwise, some broadcasters would report national programming "of interest to the community" that has nothing to do with events or issues in the area served by the station. As an example of such programming, we cited an actual example of a station that included Barbara Walters' interview with Lady Gaga as community responsive programming.¹⁰

⁹ Connolly-Ahern, Ahern, & Bortree, *The Effectiveness of Stratified Constructive Week Sampling for Content Analysis*, 86 Journalism and Mass Comm. Q. 862 (2009) (explaining that for traditional media, stratified samples of composite weeks provide the best representation of content due to the cyclical nature of news coverage).

¹⁰ KSTP (Minneapolis) Issues and Programs Report, 1st Quarter 2010 ("In an exclusive interview, Barbara Walters interviews pop sensation Lady Gaga to talk about her skyrocketing career, her family, sex and love, and what she believes is the biggest misconception about her."), available at http://mediapolicy.newamerica.net/public_interest_obligations.

The segment-by-segment approach enables broadcasters to demonstrate that even when entire programs are not dedicated to local issues, portions of those programs often are. The online form proposed by the Coalition also leaves broadcasters free to report any and all other programming that, in their judgment, illustrates how they serve the needs of their community.

We emphasized, however, that each reported segment or program must be reported in only one category, so that total numbers are not skewed by redundant reporting, which would result in the over-counting of programming. To the extent there is some overlap between these three core programming categories, the Coalition believes that it is entirely appropriate for the Commission to rely on broadcasters' good faith judgment in selecting the most suitable category for each reported segment.

Finally, we reminded the Commission that it has clear—and broad—statutory authority to require reporting regarding programming.¹¹

In accordance with the Commission's rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing please do not hesitate to contact me.

Respectfully submitted,

_____/s/____

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¹¹ 47 U.S.C. § 303(j).